

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8085 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

CHAMANBHAI @ KISHOR MAGANBHAI VAGRI THROUGH FATHER MAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order dated 1.7.1998 passed by the Commissioner of Police, Rajkot City under section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (for short 'PASA') and has prayed that he may be released forthwith from his illegal detention.

2. From the grounds of detention contained in Annexure-B, it appears that on account of registration of three cases for offences punishable under sections 323 and 324 of the IPC and further on the basis of statements of three confidential witnesses, the detaining authority was subjectively satisfied that the petitioner is a 'dangerous person' within the definition of 'dangerous person' as contained under section 2(c) of the PASA. Finding that the activities of the petitioner were prejudicial for maintenance of public order, the impugned detention order was passed.

3. The impugned order has been challenged by the learned Counsel for the petitioner only on one ground; that the activities of the petitioner in the registered cases as well as during the incidents narrated by three confidential witnesses were not prejudicial for maintenance of public order. Hence, the order of detention is bad in law.

4. So far as the activities of the petitioner as a 'dangerous person' are concerned, it was not challenged before me. Moreover, three registered offences under sections 323 and 324 of the IPC indicate repetition of commission of such offences which are punishable under Chapter XVI of the IPC. Besides this, the statements of three confidential witnesses also indicate repetition of criminal activities of the petitioner. From this material, the detaining authority rightly reached the subjective satisfaction that the petitioner is a dangerous person.

5. However, a 'dangerous person' cannot be detained under PASA unless his activities are found to be prejudicial for maintenance of public order within the meaning of section 3(4) of PASA as explained in the explanation contained in subsection (4) of section 3. For determining whether the activities of the petitioner were prejudicial for maintenance of public order or not, the grounds of detention disclose three types of material; first material is contained in para 2 of the grounds of detention, but this is nothing but general allegations regarding activities of the petitioner not supported by any material. Consequently, these general allegations could not be pressed in service for coming to a subjective satisfaction that the petitioner's activities were, in general, prejudicial for maintenance of public order.

6. The second material to reach this satisfaction is

contained in three registered offences, but from these offences, it cannot be said that the activities of the petitioner on those occasions were prejudicial for maintenance of public order. Causing injury may be simple or by sharp edged weapon to another person does not disclose fear of disturbance of law and order.

7. The third material is statement of three confidential witnesses. After examining these statements, it is difficult to conclude that the activities on these occasions were prejudicial for maintenance of public order. Even if it is believed that the witnesses on these three occasions were beaten by kicks and fist and knife was placed on the vital part of the body, namely neck and abdomen, it cannot be said that there was any indication from the grounds of detention that any injury was caused either to the three witnesses or to the members of public who gathered at the spot. If on account of petitioner's placing knife on three occasions on the neck and abdomen of the witnesses, the members of public were frightened and ran for safety, it can hardly be said that the situation was created in which even tempo of life of any community or society was disturbed.

8. The learned AGP, on the other hand, cited a Division Bench pronouncement of this Court in the case of Iqbal Hussein Vs. Commissioner of Police, 1989(2) GLR 1005, and in the case of Vijay R.Yadav Vs. Commissioner of Police, Ahmedabad, 1993(1) GLH 477. These two decisions have been discussed by me in detail in another writ petition decided by me today. These two cases can be distinguished on the sole ground that the Division Bench in these two cases, was impressed by the fact that the injuries were caused by the petitioner to the witnesses and also to the members of public who collected at the scene of occurrence during those incidents. Causing of injuries to the witnesses and to the members of public influenced the Division Bench of this Court to treat the activities of the petitioner being prejudicial for maintenance of public order. In the case before me, there is no assertion that apparent injury was caused by kicks and fist blows given by the petitioner to the three witnesses. There is no disclosure that any injury to the three witnesses was caused by sharp edged weapon like knife either on the neck or on the abdomen of the witnesses on these three occasions. Likewise, there is no allegation that any member of public who gathered on the spot received injury at the hands of the petitioner. Consequently, on these distinguishing features, the two cases relied upon by the learned AGP cannot be applied

for holding that the activities of the petitioner were prejudicial for maintenance of public order.

9. If the activities of the petitioner were not prejudicial for maintenance of public order, he could not be preventively detained, no matter he was considered to be a 'dangerous person'. As such, the impugned detention order is rendered invalid as well as illegal. The petition, therefore, succeeds and is allowed. The impugned detention order dated 1.7.1998 contained in annexure-A is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

mhs/-